



*healthy
water
for life*

**South East Water Corporation
Board Charter**

1. The role of the board

Introduction

The board is the governing body of South East Water Corporation (the Corporation), responsible for steering it in a manner that ensures the Corporation fulfills its functions effectively and complies with its governance framework. The board is accountable to the Minister for Water (the Minister) and presides over all significant strategic, commercial, regulatory, financial and risk-focused elements of the Corporation. In carrying out its responsibilities and exercising its powers, the board at all times recognises its overriding responsibility to:

- act honestly, fairly, diligently and in accordance with the law; and
- serve the interests of the State of Victoria in pursuing the objectives of the Corporation and using the resources of the organisation economically, efficiently, effectively, with due propriety in accordance with statutory or other requirements that govern public sector bodies in Victoria.

Part 6 of the *Water Act 1989* (the Water Act) sets out key legislative requirements in relation to functions and performance of the Corporation's board. Section 95(4) of the *Water Act*, as well as the Statement of Obligations (SoO), provides that the board is responsible for:

- the strategic planning of the Corporation;
- the management of the affairs of the Corporation; and
- the exercise of the powers of the Corporation.

In carrying out this role, the board must have regard to:

- sustainable management principles (as set out in section 93 of the *Water Act*); and
- the business objective that the corporation must act as efficiently as possible consistent with commercial practice (as set out in section 94 of the *Water Act*).

The board has the following roles which are detailed further in this board charter:

- strategic and business planning;
- performance monitoring and reporting (including risk management); and
- stewardship.

2. Responsibilities

The board is responsible for:

- (a) determining the vision, mission, values and strategic objectives of the Corporation and ensuring that these take appropriate account of State Government policy;
- (b) providing strategic direction and assisting management to develop and monitor strategic and performance objectives;

- (c)** determining all material policies governing the operations of the Corporation, including the policy for the delegation of authority;
- (d)** establishing and determining the powers and functions of any committee of the board, including but not limited to the Finance Assurance and Risk Management Committee, Service Delivery Committee and the People, Remuneration and Safety Committee;
- (e)** ensuring key risks are identified, assessed and appropriately managed through an appropriate risk management and compliance framework;
- (f)** approving the Corporation's, Price submission and the annual Corporate Plan (including budgets) and ensuring that these documents are prepared in accordance with guidelines issued by the Victorian Government;
- (g)** approving the key performance indicators for delivery of the Corporation's strategy;
- (h)** approving key decisions relating to strategic initiatives, such as commercial ventures, significant projects, acquisitions and disposals;
- (i)** regularly reviewing the progress and performance of the Corporation in meeting its strategic objectives, and ensuring that appropriate resources are available to achieve performance measures;
- (j)** regularly reviewing the operational performance (including the financial position) of the Corporation against performance measures and taking corrective action as required;
- (k)** ensuring that the Corporation acts in a responsible and ethical manner and that reasonable steps are taken to ensure all employees comply and adhere to the specified code of conduct for employees and policies;
- (l)** monitoring the development and progress of the safety improvement plan which includes key strategies aimed at ensuring a healthy and safe work environment for all employees;
- (m)** reviewing policies established and adopted for the oversight and management of safety at the Corporation;
- (n)** ensuring key health and safety risks are being identified and appropriately managed;
- (o)** monitoring management's responses and actions to key health and safety audits to efficiently correct any apparent deficiencies;
- (p)** monitoring and informing relevant stakeholders of statutory changes in OHS legislation and/or Government reporting requirements;
- (q)** appointing the Corporation's internal audit service provider;
- (r)** ensuring appropriate and accurate financial records are kept;
- (s)** recommending dividend payments to the State Government;
- (t)** appointing the managing director;
- (u)** establishing performance measures for the managing director, undertaking an annual performance assessment of the managing director, and providing feedback on performance;

- (v) appointing the deputy chairman;
- (w) appointing the corporate secretary;
- (x) ensuring that the remuneration structures of the Corporation are linked to the achievement of the vision, mission and strategic objectives, and that behaviours exhibited are in line with the Corporation's values;
- (y) ensuring that the managing director is undertaking effective succession planning for the Corporation;
- (z) approving all significant regulatory and shareholder reports issued by the Corporation, including the Annual Report;
- (aa) informing the Minister and Department Head of any significant issues and events and in particular, emerging or existing risks and of the systems in place to address those risks;
- (bb) notifying the Minister and Treasurer of Victoria (the Treasurer) if it believes anything has arisen that may prevent, or significantly affect, the achievement of the Corporation's objectives or financial targets under the corporate plan; and
- (cc) providing accurate financial reports and other information to the Minister, Treasurer and Premier as required by law.

3. Code of Conduct for directors

The directors of the Corporation consider there are certain fundamental ethical values that underpin their role as directors of the Corporation and as members of its board and its Committees. A number of codes of conduct are applicable to directors.

The *Public Administration Act* sets out values and principles that are fundamental to the good governance of the Corporation. The Corporation's board is also bound to comply with the Victorian *Public Entity Directors Code of Conduct* (issued in 2006 and reprinted in 2013), by the Public Sector Standards Commissioner, [click here](#) to access the document from the Victorian Public Sector Commission's website.

In addition, under section 81(1)(e) of the *Public Administration Act*, the board is required to ensure that the Corporation adopts a Code of Conduct for directors. The South East Water directors' Code of Conduct states that: Directors will:

- act with integrity and honesty;
- act in good faith in the best interests of the Corporation;
- act with a reasonable degree of care, diligence and skill;
- be honest and open with each other at all times;
- ensure that they do not engage in any other activities that may lead to a conflict of interest with their duties to the Corporation that cannot be appropriately managed;

- work co-operatively among themselves and with management in the best interests of the Corporation;
- recognise the separate roles and responsibilities of the board and management;
- develop an understanding of the role and functions of the Corporation;
- continuously strive to improve the board's operation;
- observe the spirit and the letter of the laws under which the Corporation operates;
- have an active concern for the communities that the Corporation serves;
- avoid any behaviour that is likely to reflect badly on the board or the Corporation;
- use information appropriately and in accordance with their statutory obligations;
- act in a financially responsible manner; and
- demonstrate leadership and stewardship.

If a director contravenes this code of conduct, he or she can be suspended or removed from office, in accordance with section 89 of the *Public Administration Act*.

The board is accountable for the Corporation's actions and must take reasonable steps to ensure that it is being properly informed by the managing director and other senior staff.

Duties of directors are considered further in section 7 of this board charter.

3.1 South East Water Code of Conduct – directors and employees

The Corporation has an organisation-wide Code of Conduct that applies to directors as well as employees, contractors and consultants (the ***South East Water Code of Conduct***). Directors must familiarise themselves and comply with the South East Water Code of Conduct which comprises a number of items including but not limited to, privacy and confidentiality, fraud, conflicts of interests and gifts and benefits.

4. Board Structure and Operations

The board comprises a majority of independent directors.

4.1 Appointment of directors and the chairman

Directors of the Corporation are appointed by the Minister in consultation with the Treasurer. The chairman is also appointed by the Minister in consultation with the Treasurer.

The *Water Act* also provides for alternate acting directors to be appointed by the Minister if deemed necessary.

To the extent that it is possible, the Corporation will seek to ensure that the board has an appropriate blend of skills and experience to deal with the current and emerging issues of the organisation, preferably in the areas of financial expertise, engineering, economic reform and innovation.

4.2 Meetings

The board must ensure that procedures are in place for the conduct of effective board meetings.

Under section 120(4) of the *Water Act*, the quorum for a meeting of the board of directors is a majority of the members.

At a minimum, the board will meet 11 times in each calendar year. As a general rule, the board meetings will be held on the fourth Monday of each month. Special meetings may also be held. A schedule of dates for board and committee meetings for the following calendar year will be submitted to directors by October each year. The chairman will use his or her best endeavours to ensure that meetings are held on the scheduled dates. Where meetings are re-scheduled and a director is unable to attend as a result of the change of date, the director will be entitled to request that this is noted in the Annual Report.

Directors are expected to attend all meetings of the board, and those board committees of which they are members. If a director is planning to be absent from a board meeting, leave of absence must be applied for through the chairman and must be notified to the Corporate Secretary.

The chairman will ordinarily preside over a board meeting. In his or her absence, the deputy chairman will preside over the meeting. In the absence of both, a director elected by those directors present at the meeting will preside over the meeting.

4.3 Attendees

Executives will be invited for the relevant part of the meeting where they are scheduled to give presentations or where the board considers it necessary to do so for the effective consideration of a particular agenda item. The board may invite external advisers to attend board meetings where necessary or desirable.

4.4 Voting

A question arising at a board meeting is determined by a majority of the votes of the directors present and voting on the question. In the event of an equality of votes on any question, the person presiding at the meeting has a second or casting vote.

4.5 Minutes

The board must ensure that minutes are kept of each meeting. The board must ensure that those minutes record the names of the directors present and the names of the directors voting on any question in relation to which a division is called.

4.6 Behaviours

In their interaction at board meetings and elsewhere, directors must recognise that it is not their role to direct the day-to-day management of the Corporation.

Directors are expected to vigorously debate issues within the boardroom and to continue to raise matters of concern if they feel that they have not been adequately addressed. However, once a board decision is taken, directors should support the letter and spirit of board decisions and keep confidential any board discussions, deliberations and decisions that have not been publicly disclosed.

This does not preclude a director disclosing matters which, in his or her genuinely held view, involve serious wrongdoing and where all other avenues for addressing the issue have been tested without success (e.g. if a majority of the board is acting improperly and the chairman is unable or unwilling to act).

4.7 Disclosure returns

Sections 113 and 114 of the *Water Act* require directors, within 30 days of becoming a director, and annually thereafter, to submit a return disclosing specified information in the prescribed form. The Corporation is required to keep a register, setting out all the information revealed in each director's return.

In general terms, directors must disclose information about bodies in which they hold, or have, held an office; shareholdings or other interest in bodies that are worth more than \$2,000; any land within the Corporation's district in which directors have an interest; trusts of which directors are a trustee or beneficiary; and other substantial interests which a director or a relative has that might raise a material conflict of interest. Again, some of these provisions require directors to disclose not only interests of their relatives, but interests of their domestic partner and that person's relatives: section 114(4) of the *Water Act*.

The board is also responsible for ensuring that an adequate gifts policy is in place for directors. The Corporation's gifts policy (which applies to directors and employees) is contained within the South East Water Code of Conduct, see part 3.1 above.

4.8 Register of interests

- (a) The corporate secretary shall keep a register of interests and potential conflicts of interest. Any director may request and be granted access to the register of interests.
- (b) Directors have a responsibility to keep this register up-to-date by advising the corporate secretary of any changed or new personal circumstance when it occurs.

4.9 Circular resolutions

The *Water Act* allows for resolutions of the board to be made without a meeting by means of a circular resolution (see section 122A of the *Water Act*).

4.10 Board performance review

Under the *Public Administration Act*, the board must evaluate its performance on an annual basis, and as an additional requirement under the SoO, must report its performance to the Minister and Treasurer. This report must include actions to improve the accountability of the board regarding its role. The evaluation will cover the performance of the board as a whole, its committees, the chairman, and the governance processes which support the board's work. Where resolved by the board, the evaluation will be facilitated by an independent, external consultant.

All evaluations will review the collective performance of the board, and the operation of the governance processes, as outlined in this board charter.

Where warranted as a result of the outcomes of the evaluation, the board will review and consider amendments to this board charter, the various charters of the board committees and any relevant content within the directors' handbook.

Under the *Public Administration Act*, the board is also responsible for ensuring that procedures are in place to assess directors' performance and deal with poor performance.

4.11 Board calendar

A rolling 12 month calendar will be prepared and approved by the board at its October meeting. The calendar will be used to assist in the development of the annual schedule of board and committee meetings, and with the preparation of board meeting agendas.

4.12 Review and publication of charter

This board charter will be reviewed annually, or at a time agreed by the board. A summary of the charter is available on the Corporation's website.

5. Board committees

5.1 Committee structure and operations

The strategic direction for the Corporation is articulated in a number of strategic priorities. A strategic framework consistent with these priorities and detailing supporting strategies, plans and responsibility levels is approved by the board.

In support of the board's oversight role, three board Committees will operate. These are:

- the Finance Assurance and Risk Management Committee;
- the Service Delivery Committee; and
- the People, Remuneration and Safety Committee.

Each Committee has its own charter.

In addition to the above committees, the board may, from time to time, set up ad hoc committees or working groups.

The board will keep its Committee structure. Additional board Committees should only be constituted if they assist the overall operation of the Corporation. The establishment of further committees is a matter for consideration by the board. Where practicable, membership of board committees should be rotated every two years and reviewed on an ongoing basis.

5.2 Committee reporting

The review and recommendation-making processes of the board committees are to be undertaken in such a manner that the board can rely upon the advice of the board committees.

The draft minutes of all board committee meetings held since the last board meeting will be reported on by the relevant committee chairman at the next board meeting. The committee chairman will report on the key matters considered at the committee meeting and, where necessary, key decisions endorsed by the committee will be transmitted for approval to the next board meeting. Decisions will be ratified by the board and recorded in the board minutes.

6. Key position descriptions

6.1 The role of the Minister

The Minister responsible for the *Water Act* is the Minister for Water. The Minister reports to Parliament and is accountable to the Parliament for the Corporation. The Corporation is responsible to Parliament through the Minister. The Minister:

- (a)** appoints the chairman;
- (b)** appoints all non-executive directors;
- (c)** annually receives and has the right to direct changes to the Corporate Plan;
- (d)** may provide directions and guidelines; and
- (e)** accepts the Annual Report.

Under section 307 of the *Water Act*, the Corporation must comply with any Ministerial direction issued under that Act.

6.2 The role of the chairman

The chairman is the chairman of the board, not the Corporation. The chairman has a specific role and delegated powers in respect of the operation of the board, but has no additional powers or authority beyond that of other directors in respect of decisions about the Corporation's business (other than a 'casting vote' as noted in part 4.4 above).

The chairman's overarching obligation is to ensure that the board properly discharges its responsibilities. The chairman must ensure the board undertakes its duties to an appropriate standard and in accordance with the Code of Conduct and other governance requirements. This includes an obligation to ensure all policies adopted by, or relevant to, the Corporation are provided to all directors.

If the chairman is required to make decisions without the opportunity to consult all directors, he or she will act in light of an assessment of what the board would wish to do in the circumstances.

(a) Board leadership

In the absence of an ability to influence the calibre and mix of directors, the chairman's role must be to ensure that the board fully utilises the knowledge and skill available to it (i.e. board directors must elicit and respect each others' expertise, build upon each others' contributions and seek to combine their insights in constructive ways).

The chairman will seek to ensure that directors are aware of each others' areas of expertise; that directors feel free and open to ask questions and share ideas; and that all directors are given an opportunity to participate and appropriately influence decision-making.

The chairman will also ensure that:

- all new directors receive suitable induction; and
- all directors are given opportunities and encouraged to undertake professional development relevant to their roles on the board.

(b) Board direction

A key aspect of the chairman's role is to ensure that the board has defined its role and relationship with management to enable both to function effectively and efficiently.

This includes overseeing the establishment of board committees, including their remit, composition and reporting procedures, and ensuring that there are appropriate processes for strategy planning and budgeting, senior executive appointments, performance management, remuneration and succession planning and all other key responsibilities of the board.

(c) Board meetings

This is where the board carries out most of its responsibilities. The chairman's role includes:

- (i) ensuring appropriate matters are brought before the board for information, discussion or decision as the case may be. This involves ensuring there is an appropriate program of board activities each year; agreeing the agenda of each meeting with the managing director and Corporate Secretary, and discussing with them which are the most important items and how they can best be handled. The chairman is also the point of contact for non-executive directors wishing to have items placed on the agenda;
- (ii) ensuring that information provided to the board is appropriate to enable directors to discharge their responsibilities. It should be relevant, professional, clear and concise;
- (iii) ensuring that directors are exposed to a range of individuals from throughout the Corporation to ensure that their information is not only channeled and screened through the managing director;
- (iv) at meetings, ensuring that every opportunity is provided for the full experience of all directors to be brought to bear on key issues. This involves recognising who may have a particular contribution to make on each issue and encouraging their participation, and avoiding too much time being spent on less important matters or contributions. There is also the normal chairman's responsibility to recognise when a consensus is emerging, to articulate it and to ensure that any decisions are unambiguous – particularly when formal resolutions have not been drafted;
- (v) ensure that all potential conflicts of interest (including conflicts of duties) are raised at the beginning of each meeting and resolved in accordance with board policy; and

- (vi) the intangible but key leadership role of fostering a climate of openness and sense of common purpose. This climate allows vigorous debate without acrimony, where contributions are valued and not derided, avoids the formation of cliques, and recognises the overlapping but different roles of executive and non-executive directors.

(d) Between meetings

Between board meetings, the chairman is the principal point of contact with management on matters of substance. Non-executive directors should contact the chairman to raise matters that warrant discussion with the full board, and the chairman should aim to agree a course of action to follow up any issues raised.

(e) Board review

A key responsibility for the chairman is to review whether the board is performing effectively and ensuring that there is a suitable process in place for reviewing performance of directors (both individually and collectively). This should occur regularly (at least annually).

(f) The chairman and the managing director

The chairman is also the principal source of non-executive advice to the managing director between board meetings. As such, the managing director should inform the chairman of any important and urgent matters that arise between board meetings. The chairman will discuss with the managing director whether it requires involvement of the board and, if so, what form this should take. When authority is given to management to proceed with an action before consulting the full board, the managing director or chairman must inform the board at the next meeting.

The chairman should be readily approachable by the managing director to discuss any matters of concern to him or her. The chairman can serve as a sounding board for the managing director, assisting him or her to maintain perspective in the performance of the role.

(g) The representational role

The chairman is not the spokesman for the Corporation on day-to-day operational matters, other than at the request, or with the agreement, of the managing director.

The chairman can, if required, have an advocacy role with the government in power. In addition, the chairman can assist the Corporation and the managing director by attending and speaking at events where it is important for the Corporation's leadership to be represented.

There will also be occasions where the chairman will have a responsibility to 'speak' on behalf of the board on board matters. Where possible, any significant comments (such as key policy areas or senior management changes) would be commented upon by the board beforehand. On lesser occasions (such as social, board visits, facility inaugurations or

retirements), the chairman will use his or her own judgment on content, but will welcome input and feedback.

The chairman will have contact with the media if he or she considers it in the interest of the Corporation to do so. Primarily this will remain the managing director's responsibility, especially on operational matters.

In order to maintain a wide range of contacts and to gain experience that may be useful to the Corporation, the chairman will participate in other organisation, government and not-for-profit boards or activities. For similar reasons, he or she may selectively attend, as the chairman of the Corporation, relevant conferences or social functions.

6.3 The role of the deputy chairman

The board must appoint a director as deputy chairman. When the chairman is absent on planned or unplanned leave, or for any other reason is unable to fulfill his or her duties, the deputy chairman will be the acting chairman. In this capacity, the deputy chairman assumes all the roles and responsibilities of the chairman as outlined above.

The position of deputy chairman will be reviewed at least every three (3) years applying the following process:

- (a) the chairman will call for nominations for the role of deputy chairman at the scheduled board meeting;
- (b) if there is more than one nomination then all candidates and their nominators will be allowed to speak, and a vote will take place by poll; and
- (c) if there is not more than one nomination, then that person will be elected unopposed as deputy chairman.

6.4 The role and responsibilities of individual directors

Individual directors should:

- (a) be well prepared and informed for board meetings;
- (b) ensure meeting attendance is satisfactory;
- (c) demonstrate a willingness to devote time and effort to understand the Corporation and its business;
- (d) demonstrate a readiness to participate in events outside the boardroom, such as site visits;
- (e) ensure quality and valuable contributions at board meetings;
- (f) contribute to the development of strategy and risk management policy;
- (g) successfully bring knowledge and experience to bear in the consideration of strategy;
- (h) effectively probe to test information and assumptions;
- (i) where appropriate, maintain views and resist pressure from others;
- (j) effectively and proactively follow up areas of concern;

- (k) behave in a way that engenders mutual trust and respect within the board;
- (l) actively and successfully refresh knowledge and skills;
- (m) communicate effectively and maintain successful relationships with fellow board members, senior management and others;
- (n) present views convincingly, yet diplomatically, and listen and take on board the views of others; and
- (o) liaise as required, with the Corporation’s management and staff, and inform the chairman of all such interactions.

6.5 The role of the managing director

Save for those matters specifically reserved to the board under this board charter and the delegation of authority framework, the board delegates to the managing director all powers to manage the day to day business of the Corporation, including the authority to achieve the vision, mission and strategic objectives of the Corporation in accordance with the Corporate Plan, risk management framework and policies approved by the board.

The managing director in turn approves sub-delegations of authority to the executive and management in accordance with the delegations of authority framework.

The managing director is appointed by the chair and sits as the executive member of the board.

The managing director is accountable to the board for the authority that is delegated to him or her and for the performance of the Corporation.

Throughout the annual board cycle, the managing director will provide regular updates to the board on the progress being made by the Corporation towards the achievement of the vision, mission and strategic objectives in accordance with the Corporate Plan, risk management framework and policies approved by the board.

6.6 The role of the corporate secretary

The corporate secretary is accountable to the board and his or her appointment and removal is a matter for the board as a whole.

The corporate secretary, with the assistance of legal counsel, will advise the chairman, the board, and individual directors on all matters of governance process including but not restricted to:

- Assisting the chairman and managing director schedule and set agendas for board and committee meetings;
- Attending board and committee meetings and taking minutes of the meetings;
- Providing advice and assistance to the board concerning corporate governance matters;
- Keeping and updating, as required, a register of interests; and
- Coordinating the annual review of board and committee performance.

The corporate secretary's advice and services shall be available to all directors and board committees, and the corporate secretary may retain independent governance advisory services at the request of the board or a board committee.

6.7 The role of management

The formal delegation of management authority is to the managing director and, subject to the oversight of the board, it is for the managing director, acting within this delegated authority, to determine how to conduct the management of the organisation.

The managing director is also the prime source of information to the board.

The managing director will, at each meeting, report to the board upon all matters. This includes matters covering key performance indicators, all material aspects of the Corporation's operations, including key areas of risk and importance. The managing director will also raise for discussion all issues of which, in carrying out their roles, the directors should be aware and on which they should be able to express a view. All directors should also be made aware of matters likely to come into the public arena and matters of material concern that may adversely or favourably affect the Corporation.

Management and staff, in turn, should raise issues they wish to bring to the attention of the board through the managing director, or in exceptional circumstances, through the chairman.

The Corporation's executives and staff, as nominated by the managing director, will attend board meetings to address issues relevant to their areas of responsibility.

Management must recognise that the directors have the right to seek further information and receive answers to any questions they may wish to ask.

In addition to the responsibility for the day-to-day operations of the organisation, management must also ensure the board is fully informed about, and satisfied with:

- (a)** management's plans for carrying on and developing its activities;
- (b)** approval of the Annual Report, all Financial Statements, including directors' Reports, and any other significant report or release to the public or Parliament to which the managing director or chairman may consider needs board approval;
- (c)** approval of the Annual Budget, Treasury policy, forward strategic plans and estimates for the organisation, including dividend declarations, resourcing strategies, long-term capital expenditure programs, material variations, new debt, debt refinancing, repayments, financial instruments, counterparties, exposure limits and investment arrangements;
- (d)** receiving and considering monthly reports covering safety, financial and operational performance against budget and targets and reasons for material variations and trends; and
- (e)** regularly receiving and considering reports from the managing director and other executives covering key performance indicators and all material aspects of the Corporation's operations, including key areas of risk and importance.

7. Statement of directors' legal obligations

7.1 General directors' duties

Directors of the Corporation are required to comply with the public sector values of responsiveness, integrity, impartiality, accountability, respect, leadership and human rights.

(a) Duty of Good Faith and to Act for a Proper Purpose

A director must act in good faith, for a proper purpose and in the best interests of the Corporation when exercising or discharging his or her duties.

In determining whether a purpose is proper or in the best interests of the Corporation as a whole, directors should have regard to the purposes set out in the *Water Act* and SoO, and the governance framework of the Corporation.

Directors should not only have regard to the interests of any particular group, but must act independently and in good faith. They must not use their position to promote the interests of a particular group or act as if answerable to an appointing interest rather than the Corporation as a whole.

(b) Duty of Care and Diligence

Directors must use reasonable care, skill and diligence in fulfilling the functions of their office and exercising the powers attached to the office.

This means that directors must meet as often as circumstances require, and not simply on periodic occasions with no involvement between meetings. Directors must inform themselves with respect to matters for their decision to the extent they reasonably believe appropriate.

In order to discharge this duty:

Directors **should**:

- (i) ask questions of, and request information from the managing director and management in board meetings, or through the managing director or chairman outside of board meetings;
- (ii) ensure proper systems are established for the management and supervision of the Corporation in respect of its business and financial affairs and to comply with the law and meet the objectives or purposes of the Corporation; and
- (iii) rely on the proper discharge by management of their responsibilities.

Directors **should not**:

- (i) try to manage the Corporation or seek to be involved in decisions included in the delegation of day-to-day operations to the managing director;
- (ii) instruct staff members on operational matters; or
- (iii) ignore warning signs that put them on notice that there may be problems with respect to the management of the Corporation or its compliance with laws.

7.2 Pecuniary Interests and other Conflicts of Interest

The board must ensure that processes are in place to manage conflicts of interest for directors, both financial and non-financial interests. That process must:

- require directors to make a full disclosure of the conflict of interest at meetings of the board;
- require that disclosure to be recorded in the minutes of the board meeting;
- require the board to determine whether that conflict of interest is material;
- enable the board to:
 - require the director who has a conflict of interest in a matter to be absent from the meeting while the board is considering that matter; or
 - prohibit the director from taking part in any decision of the board on that matter.

The board must also ensure that there is a policy in place for directors that prevents directors from seeking or accepting for themselves or others, gifts or benefits that could be reasonably perceived as influencing them.

(a) What is a conflict?

As part of each director's overall general duty to act in good faith and in the best interests of the Corporation, each director has a duty to avoid any actual or potential conflict between their own interests and those of the Corporation.

There is a potential conflict of interest where a reasonable person, looking at the relevant facts and circumstances, would consider there to be a real and sensible possibility of conflict. Conflicts can be actual, potential or perceived – and all should be disclosed by directors.

Three types of influence may bring about a conflict of interest: pecuniary, non-pecuniary and personal interests.

(b) Pecuniary interests

The *Water Act* specifies particular rules about directors' *pecuniary interests* and how they are to be managed.

When does a director have a pecuniary interest in a matter being considered?

- (i) Where a director (or their spouse or nominee) is a member of a company or other body which has a pecuniary interest in the matter; or
- (ii) Where a director (or their spouse) is the sole proprietor, a director, partner or employee of an entity that has a pecuniary interest in the matter; or
- (iii) Where a director (or their spouse) has a beneficial interest in shares in a company that has a pecuniary interest in a matter being considered, and the value of those shares exceeds \$2,000 or 1% of the total nominal value of the issued share capital of that entity (whichever is less).

A director does not have a pecuniary interest in a matter only by virtue of:

- (i) receiving a service from the Corporation in common with other people (for example, water and sewerage connections);
- (ii) membership of a charitable, benevolent, community or recreational club or association; or
- (iii) membership of an employers' or employees' association.

(c) Non-pecuniary and personal interests of directors

Conflicts of interest can arise where the director may have influence over a decision making process, and the director has a relationship with a person in relation to whom the decision is being made or where the gain or loss occasioned by the conflict is non-financial. For example, a conflict of interest could arise where:

- a director (or relative of the director) was a member of a community group that was lobbying South East Water about a particular issue;
- a director's close friend heads up a company that tenders for a large project and that director is part of the decision-making for that tender; or
- where the gain or loss for the director involved receipt by the director or a family member of something of value, such as a weekend away or access to sporting facilities.

The *Victorian Public Entity Directors' Code of Conduct*, which is binding on all directors, also deals with both financial and non-financial conflicts as does the South East Water Code of Conduct.

(d) Political candidacy

A director who becomes a candidate for election to the Parliament of Victoria, the Commonwealth or a municipal or shire council, must notify the board of that fact.

7.3 Dealing with conflicts of interest

The *Water Act* sets out specific requirements for dealing with pecuniary interests (reflected below) and the *Public Administration Act* requires processes to be in place that deal with pecuniary and non-pecuniary interests that may give rise to conflicts.

(a) All interests to be disclosed

Where a director has any pecuniary interest, or any other interest that might give rise to a potential, actual or perceived conflict, in any matter in which the Corporation is involved, that director *must disclose* the nature of his or her interest to the board immediately prior to the consideration of such matter. Where a director has an interest that requires disclosure, but he or she does not intend to be present at the meeting at which that issue is to be considered, he or she must advise the chairman of the interest before the meeting is held.

The procedure below applies to *all* pecuniary interests.

It also applies in relation to all other interests that require disclosure, unless the board (excluding the director with the interest) resolves that the disclosed (non-pecuniary) interest does not give rise to a material conflict and does not preclude that director from attending the relevant meeting and/or voting in relation to the matter.

(b) Participation at meetings by directors with a conflict

Where a director has a pecuniary interest or a conflict of interest in a matter being considered, that director:

- (i) may attend the meeting during the consideration of that matter and may take part in discussion, although the director may be required by the board to leave the room when the matter is being considered;
- (ii) must not lobby any of the other directors or take part in any decision-making processes in respect of that matter;
- (iii) must not move or second any motion on a question relating to that matter;
- (iv) must leave the meeting while any vote is taken on a question relating to the matter, and not return until the chairman advises that the vote has occurred; and
- (v) must not disclose any information about that matter to a third party.

The minutes of a meeting of the board must include a statement setting out the nature of the disclosed interest, and note the affected director's absence during any vote and whether or not the director was present during consideration of the matter.

In the case of a disclosure made at, or before a committee meeting, a statement containing the above information must be recorded by the committee and included in the minutes of the next ordinary board meeting.

(c) Continuing conflicts

Where a pecuniary interest or other conflict materially impacts on the ability of a director to perform his or her role at the Corporation, that director should consider whether to seek a leave of absence or resign from the board, or whether to divest that shareholding or other interest, if necessary, upon consultation with the board.

Resignation may be the only option where, for example, a director has so many or such significant actual or perceived conflicts that their continued participation is so damaging to that director or to the Corporation that he or she is unable to participate meaningfully as a director of the Corporation.

(d) Delegation of decision to a committee

If a significant number of directors are unable to participate in the consideration of an issue, it may be appropriate to refer the matter to a committee of the board, and for the board to make a decision on the basis of the committee's recommendation. Any conflicted director may not participate in any deliberations on the issue.

(e) Other directorships

Directors should be careful to avoid potential or perceived conflicts when considering other directorships, positions or roles. Directors should discuss such appointments with the chairman prior to acceptance.

(f) Conflict – consequences and offence penalties

If a director fails without reasonable cause to disclose an interest as required, section 101(3) of the *Water Act* provides that the Minister in consultation with the Treasurer must remove the relevant director from the board (see also part 7.6 below).

Failure either to make a declaration, or to act in accordance with section 109(3) of the *Water Act*, is an offence carrying a penalty of 20 penalty units. If a director is found guilty of an offence under section 109 of the *Water Act*, he or she may be prohibited from sitting on the board of a water corporation for seven years.

The board must also notify the Minister as soon as practicable after becoming aware of any breach of the conflicts of interest process (section 81 of the *Public Administration Act*).

7.4 Use of position and information

Directors must not use their position or information gained as a director to gain advantage for themselves or others or cause detriment to the Corporation.

“Information” need not be totally confidential; it is enough that it is information that has come to a director in their capacity as a director of the Corporation. For the avoidance of doubt, all board and board committee discussions and papers should be treated as confidential for these purposes and should not be disclosed outside board meetings.

7.5 Right to information

In order to properly fulfill their obligations, directors have a right to sufficient information to enable them to properly discharge their duties.

In this respect, directors **should**:

- (a)** request such information as they require to fulfill their responsibilities as a director of the Corporation;
- (b)** respect the need for confidentiality of such information, including, if necessary, viewing it in a confidential place at the offices of the Corporation; and
- (c)** direct such requests for information through the chairman – who, in turn, shall advise the managing director.

Directors **should not** request information other than for the purposes of discharging their role as a director.

7.6 Ceasing to hold office

Under provisions of the *Water Act* and *Public Administration Act*, a director will cease to hold office if he or she:

- becomes an insolvent under administration;

- fails to attend 3 consecutive board meetings without approval of the board;
- is found guilty of an indictable offence;
- holds a paid office in the Corporation; or
- resigns by notice in writing to the Minister.

Under section 101 of the *Water Act*, a director may also be removed at any time by the Minister in consultation with the Treasurer. A director must be removed for a breach of section 109, as discussed above, or if found guilty of an offence that may affect their ability to carry out their duties.

7.7 Other matters

(a) Access to board papers

Directors are entitled, during their term of office and for seven years after ceasing to be a director, to inspect, and take copies of the “books” of the Corporation for the purposes of legal proceedings:

- (i) to which the director is a party;
- (ii) which the director intends in good faith to bring; or
- (iii) the director believes in good faith action will be brought against him or her.

“Books” are defined to include: a register; any other record of information; financial reports or records and documents.

(b) Access to other documents

The Corporation will comply with its obligation under section 95 of the *Public Administration Act* to keep and make available certain documents to directors.

(c) Remuneration and allowances

The Corporation may pay remuneration and allowances to directors within limits fixed by the Minister. The Corporation may also reimburse directors' reasonable expenses.

(d) Indemnification of directors

The Corporation will indemnify directors from liabilities incurred by them in that role, if it is not in respect of a liability:

- (i) to the Corporation or related body corporate;
- (ii) for which the director has been ordered to pay a pecuniary penalty or compensation under certain provisions of the *Corporations Act*; or
- (iii) that arose from a lack of good faith, as in gross negligence.

Indemnity for the director's liability for legal costs is also excluded if the costs are incurred in respect of a liability of the type detailed above or, in respect of criminal proceedings, if the person is found guilty. There are other related exclusions.

(e) Directors' insurance

The *Water Act* also allows the Corporation to insure directors against liabilities incurred in the performance of that role, other than for liabilities arising from willful breach of duty or for misuse of their position as directors or of the Corporation's information.

(f) Independent professional advice

If, in furtherance of a director's duties to the Corporation, the director obtains independent professional advice, the Corporation will meet the reasonable costs of such advice provided that:

- (i) the chairman of the board gave prior approval to the obtaining of the advice; or
- (ii) if the chairman was unavailable or refused to give such approval, the board gave prior approval to the obtaining of the advice.

(g) Annual declaration

Directors will be required to make an annual declaration covering the following matters:

- (i) details of substantial sources of income or positions or offices held, shareholdings or other business interests, real estate, contracts or other interests that may give rise to an actual or perceived conflict of interest with respect to duties owed as a director of the Corporation;
- (ii) agreement to immediately notify the chairman or the board if a significant change in circumstances occurs; and
- (iii) agreement to abide by this board charter.

(h) Proceedings against directors

If a director contravenes any provision of Division 2 of the *Public Administration Act*, the Corporation or the Minister may commence proceedings to recover any loss or damage suffered by the Corporation, or any profit made by the director, as a result of the contravention.

(i) Director's deed

It is intended that each director shall enter into a Deed with the Corporation to grant him or her access to the Corporation's books that pre-date the Corporation's establishment under the *Water Act* on 1 July 2012. A copy of the Deed of Access is provided in the directors' handbook.